

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 18-0681V

UNPUBLISHED

DAVID CHRISTIAN KUNZ,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: August 27, 2021

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA)

*David Charles Richards, Christensen & Jensen, P.C., Salt Lake City, UT, for Petitioner.*

*Mallori Browne Openchowski, U.S. Department of Justice, Washington, DC, for  
Respondent.*

### **DECISION AWARDING DAMAGES<sup>1</sup>**

On May 14, 2018, David Christian Kunz filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that he suffered a left shoulder injury related to vaccine administration (“SIRVA”). Petition at ¶¶ 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On October 7, 2019, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On August 27, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$116,105.73. Proffer at 1-2. In the Proffer, Respondent represented that Petitioner agrees with the proffered

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<sup>1</sup> Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$116,105.73 (comprised of damages for pain and suffering in the amount of \$110,000.00, damages for lost wages in the amount of \$3,245.72, and damages for unreimbursed out-of-pocket medical expenses in the amount of \$2,860.01) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**  
Brian H. Corcoran  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

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DAVID CHRISTIAN KUNZ,

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No. 18-681V  
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ECF

**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

On October 4, 2019, respondent conceded that entitlement to compensation was appropriate under the terms of the Vaccine Act. ECF No. 31. Thereafter, on October 7, 2019, Chief Special Master Corcoran issued a Ruling on Entitlement, finding that petitioner was entitled to vaccine compensation for his shoulder injury related to vaccine administration (“SIRVA”). ECF No. 33.

**I. Compensation for Vaccine Injury-Related Items**

Based on the evidence of record, respondent proffers that petitioner should be awarded **\$116,105.73**, which is comprised of damages for pain and suffering in the amount of \$110,000.00, damages for lost wages in the amount of \$3,245.72, and damages for unreimbursed out-of-pocket medical expenses in the amount of \$2,860.01. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

## **II. Form of the Award**

The parties recommend that compensation provided to petitioner should be made through a lump sum payment of \$116,105.73, in the form of a check payable to petitioner. Petitioner agrees.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

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